

(ii) The FDIC has indicated that, based upon the association's proposed post-conversion operating plan, the association would achieve a capital level acceptable to the FDIC within a period satisfactory to the FDIC.

§ 563b.26 Viability of converted savings association.

(a) An application of a SAIF-insured savings association to convert pursuant to this subpart may be approved by the Office in its discretion if it finds that the SAIF-insured savings association will be a "viable entity" following the conversion.

(b) A converting SAIF-insured association is a "viable entity" if:

(1) As part of the plan of conversion:

(i) The capital being infused into the association through its conversion is sufficient to cause the converted or resulting association to be adequately capitalized; provided that the OTS, in its discretion, may require higher capitalization as it deems appropriate for safety and soundness reasons; and

(ii) The converting association, its proposed conversion, and any acquiror(s) comply with applicable supervisory policies; and

(2) The transaction taken as a whole is in the best interest of, and does not present potential for injury or detriment to, the converting association, the federal deposit insurance funds, or the public interest.

[54 FR 49596, Nov. 30, 1989, as amended at 57 FR 49381, Nov. 2, 1992]

§ 563b.27 Application for voluntary supervisory stock conversion.

A savings association may apply for OTS approval of a voluntary supervisory conversion pursuant to this subpart by filing the following information and documents in accordance with the procedures specified in § 563b.29 of this subpart:

(a) A plan of conversion adopted by a majority of the directors of the association, which shall contain at a minimum the name and address of the savings association; the names, addresses, dates and places of birth, and social security numbers of the proposed purchasers of conversion stock and their relationship to the savings association; the title, per-unit par value, number,

and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers and their affiliates and associates (as defined in § 563b.2(a) of this part); a description of the liquidation account, if required under § 563b.28 of this subpart or if otherwise established; and certified copies of all resolutions of the board of directors relating to the Plan.

(b) A copy of any agreements between the savings association and the proposed conversion stock purchasers.

(c) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences to the savings association arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization.

(d) A business plan, which shall contain a description of the proposed operating policies of the savings association or the resulting savings association following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the savings association's results of operations for the three-year period following completion of the conversion. The projections should show the continuing ability of the converted association to meet applicable capital requirements. The savings association shall specify the assumptions on which its projections are based.

(e) A Holding Company Act application, Control Act notice, or rebuttal submission for each proposed conversion stock acquiror as may be required under part 574 of this chapter, if applicable, and any required prior-conduct certification pursuant to RB 20¹ for each such acquiror.

(f) The proposed charter and bylaws of the converted savings association.

(g) The proposed stock certificate form.

¹Regulatory Bulletins are available at the address listed in § 516.40(b) of this chapter.

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(h) A description of all existing and proposed employment contracts, if applicable.

(i) All filings required under the securities offering rules of 12 CFR parts 563b and 563g.

(j) A subordinated debt application, if applicable.

(k) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of the applications for Federal Home Loan Bank membership, and FDIC insurance of accounts, if applicable.

(l) Information to support the value of any non-cash assets to be contributed to the savings association in connection with the voluntary supervisory conversion, if applicable. Appraisals submitted in this connection must be acceptable to the OTS.

(m) A description of the estimated expenses of the voluntary supervisory conversion to the savings association.

(n) The association's most recent audited financial statements and Thrift Financial Report with an appropriate explanation to support the determination that the association's current capital levels qualify it to undertake a supervisory conversion.

(o) *Pro forma* financial statements prepared in accordance with the regulations and policies of the OTS to reflect the effects of the transaction. These *pro forma* financial statements should be supplemented to identify the converting or resulting association's tangible, core, and risk-based capital levels and show the appropriate adjustments necessary to compute such capital levels.

(p) An opinion of independent counsel that the voluntary supervisory conversion of a state-chartered savings association to state stock form is authorized under applicable state law, if applicable.

(q) A specific description of any of the features of the savings association's application that do not conform to the requirements of this subpart.

(r) A specific description of and detailed justification for any waivers or supervisory forbearances that are requested as part of the voluntary supervisory conversion.

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(s) A statement of all other applications required pursuant to federal or state banking laws for all transactions related to the association's conversion, copies of all decisions, orders, opinions, and other similar dispositive documents issued by such regulatory authorities relating to such applications, and, if requested by the OTS, copies of such applications and related documents.

[54 FR 49596, Nov. 30, 1989, as amended at 57 FR 49381, Nov. 2, 1992; 66 FR 13009, Mar. 2, 2001]

§ 563b.28 Liquidation account.

A liquidation account must be established in accordance with the requirements set forth at § 563b.3(f) of this part; provided, however, that the OTS may waive this requirement if the converting association's tangible capital is less than zero, or for other good cause.

[57 FR 49382, Nov. 2, 1992]

§ 563b.29 Procedural requirements.

(a) *Filing of voluntary supervisory conversion application.* A savings association seeking to convert pursuant to this subpart shall file with the OTS the information and documents specified in § 563b.27 of this subpart.

(b) *Incomplete application.* An application for supervisory stock conversion that does not contain all of the applicable information and documents specified in § 563b.27 of this part shall constitute an incomplete application, and the Regional Director shall continue to seek other appropriate supervisory resolutions of the association's financial condition pending the filing of a complete application.

(c) [Reserved]

(d) *Termination or amendment of charter.* (1) Upon approval by the Office of a plan of supervisory stock conversion of a state-chartered savings association or a federally-chartered savings association which is converting to a state-chartered stock savings association, the mutual charter of such savings association shall terminate upon the issuance to it of a stock charter under the laws of the state in which its home office is located. If such converting savings association is a federally-chartered savings association, its federal